

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
International Settlements Policy Reform)	IB Docket No. 11-80
)	
Joint Petition for Rulemaking of AT&T Inc.,)	RM-11322
Sprint Nextel Corporation and Verizon)	
)	
Modifying the Commission's Process to Avert)	IB Docket No. 05-254
Harm to U.S. Competition and U.S. Customers)	
Caused by Anticompetitive Conduct)	
)	
Petition of AT&T for Settlements Stop Payment)	IB Docket No. 09-10
Order on the U.S.-Tonga Route)	

To: The Commission

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation ("Sprint") hereby submits its comments in the above-captioned proceeding. Sprint takes this opportunity to commend the Commission and its staff on their continuing efforts to reduce regulatory burdens for U.S. carriers offering international services while maintaining safeguards to protect against anticompetitive conduct on U.S. international routes. Sprint offers herein its views on the proposals contained in the Notice of Proposed Rulemaking in this proceeding.¹

¹ International Settlements Policy Reform, IB Docket No. 11-80, FCC 11-75 (rel. May 13, 2011) ("NPRM").

I. THE INTERNATIONAL SETTLEMENTS POLICY SHOULD BE ELIMINATED ON ALL INTERNATIONAL ROUTES EXCEPT THOSE ON THE COMMISSION'S EXCLUSION LIST.

Sprint supports the proposal in the NPRM to eliminate the International Settlement Policy (ISP) on all routes except Cuba, the sole country on the Commission's "Exclusion List."² Thanks in large part to the Commission's pro-competitive policies, the international telecommunications market is substantially competitive, and U.S. consumers reap the benefits of such competition through much lower rates for international calling. Sprint agrees with the NPRM's thesis that "[e]liminating the ISP will enable more market-based arrangements between U.S. and foreign carriers on all U.S. international routes."³ In particular, the elimination of the requirement that settlement agreements with foreign carriers on ISP-covered routes must have symmetrical settlement rates (*i.e.*, a 50-50 split of the total accounting rate (TAR)) and proportionate return traffic (*i.e.*, U.S.-inbound traffic from a foreign carrier proportionate to the share of U.S.-outbound traffic terminated by that carrier) will remove two significant obstacles to the negotiation of market-based termination arrangements on those international routes. Moreover, commercial agreements for the termination of traffic are generally proprietary in nature, and the marketplace is distorted when the text of such an agreement is filed with the Commission and can become available to competitors. Elimination of the ISP in its entirety thus increases the likelihood of better, more market-driven termination agreements on the relatively few international routes that currently remain covered by the ISP.

² *Id.* at ¶ 13.

³ *Id.* at ¶ 1.

In eliminating the ISP, the Commission should make it clear that this action has no retroactive effect whatsoever on any previous application of the ISP's requirements or the requirements of the Commission's *Benchmark Rates Order*.⁴ In particular, Sprint requests that the Commission clarify that elimination of the ISP in no way validates any settlement agreement previously rejected by the Commission for non-compliance with these Commission policies.

II. SPRINT DOES NOT OBJECT TO A REQUIREMENT THAT NOTICE OF ABOVE-BENCHMARK RATES BE FILED WITH THE COMMISSION.

The NPRM proposes a new requirement that U.S. carriers file agreements when the agreed-upon rates to be paid by a U.S. carrier for termination of traffic to a foreign carrier exceed the levels set by the Commission's *Benchmark Rates Order*.⁵ As an alternative, the NPRM seeks comment on a requirement that notices of such agreements be filed with the Commission instead of the agreements themselves.⁶

Sprint believes that the Commission should be notified of those exceptional situations where intransigent foreign carriers require payment of termination rates higher than the Commission's benchmark. This procedure would "put the spotlight" on a foreign carrier seeking such a ridiculously high rate, and would likely serve to create pressure to reduce the rate. Sprint also believes, however, that the filing of the entire termination agreement containing above-benchmark rates should not be an *ex ante* requirement. Such agreements may contain other terms and conditions, independent of rate levels, that are proprietary and should remain confidential. If the Commission does require the

⁴ *International Settlement Rates*, 12 FCC Rcd 19806 (1997).

⁵ NPRM at ¶ 17.

⁶ *Id.* at ¶ 19. The Commission would of course retain the authority to require a subsequent filing of the agreement itself. *Id.*

submission of entire termination agreements, filing carriers should have the opportunity to seek confidential treatment of proprietary information.

III. THE COMMISSION SHOULD UTILIZE EFFECTIVE REMEDIES TO ADDRESS ANTICOMPETITIVE CONDUCT ON U.S. INTERNATIONAL ROUTES.

Much of the NPRM is devoted to a discussion of the different forms that anticompetitive conduct by foreign carriers can take and what remedies the Commission should pursue to address such conduct.⁷ Sprint agrees that partial circuit disruption and the threat of circuit disruption, not simply complete circuit disruption, would constitute anticompetitive conduct if the purpose of such actions is to force unwarranted rate increases or other onerous terms or conditions on U.S. carriers. U.S. carriers making the complaint that a foreign carrier has undertaken or threatened to undertake actions that would result in circuit disruption should be prepared to document these facts through correspondence or declarations demonstrating the actions taken and their anticompetitive purpose. Such actions are not commonplace, but the Commission should be prepared to act decisively in the event they are taken.

Sprint agrees with the NPRM that the remedy of choice in most circumstances of anticompetitive behavior should be an order prohibiting any increase in termination payments to the foreign carrier engaged in such conduct.⁸ Although rare, the threat of circuit disruption is usually focused on a particular date that new, higher rates will go into effect, and if U.S. carriers do not accept the rate by that date, their traffic will not be terminated. Given adequate time, the Commission could take action in the face of such a

⁷ *Id.* at ¶¶ 22-58.

⁸ *Id.* at ¶ 40.

threat by ordering that payment of the increased rate will not be permitted. If effectively executed in the first instance, this procedure would put foreign carriers and governments on notice that anticompetitive actions, including the threat of circuit disruption, will not be an effective means to achieve termination rate increases.

Sprint also agrees that several other possible remedies discussed in the NPRM – requiring increases in U.S.-inbound rates,⁹ reimposing the ISP,¹⁰ government-to-government communication,¹¹ and WTO complaints¹² – are either inappropriate or inadequate by themselves as effective remedies. The remedy of revoking or placing limitations on the Section 214 authority of a U.S. affiliate of a foreign carrier engaged in anticompetitive conduct would appear to be a severe one,¹³ and should be reserved for cases of sustained circuit disruption or other egregious behavior. Sprint believes that the proposed remedy of prohibiting the termination by U.S. carriers of traffic from offending foreign carriers may not be effective.¹⁴ Foreign carriers have the ability to re-originate such traffic through intermediate carriers such that their traffic would thus be terminated in any case.

Sprint believes that a Commission order directing U.S. carriers to make no payments or to stop payments to an offending foreign carrier could be an effective remedy to sustained anticompetitive conduct that is directed at one or more, but not all,

⁹ *Id.* at ¶ 41.

¹⁰ *Id.* at ¶ 42.

¹¹ *Id.* at ¶ 43.

¹² *Id.* at ¶ 48.

¹³ *See id.* at ¶ 44.

¹⁴ *See id.* at ¶ 45.

U.S. carriers.¹⁵ If the circuits of one U.S. carrier are disrupted, substantial amounts of the traffic that would have been carried by that carrier will flow to other U.S. carriers through the wholesale market. Directing such U.S. carriers to make no payments for traffic terminated by a foreign carrier that has disrupted the circuits of other U.S. carriers will counter “whipsawing” and will ensure that the foreign carrier derives no benefit from its anticompetitive conduct.

Sprint has no objection to the legal argument put forward in the NPRM supporting the application of benchmarks, in limited circumstances, to traffic that is originated by U.S. carriers but terminated at the destination foreign country after being passed to intermediate foreign carriers.¹⁶ Use of a notice and comment proceeding before such a remedy is imposed to address anticompetitive conduct by the terminating foreign carrier, as suggested in the NPRM,¹⁷ would permit the exposition of any specific circumstances that prompted such indirect routing and would allow U.S. carriers engaged in such re-origination sufficient time to extricate themselves from any short-term commitments to the intermediate carriers. If the Commission adopts such an approach, it should clarify that such action is not an attempt to exert its jurisdiction over the intermediate carriers engaged in re-origination or to call into question the legitimacy of re-origination or “hubbing,” which is often used for the beneficial purpose of least-cost routing.

¹⁵ See *id.* at ¶¶ 46-47.

¹⁶ See *id.* at ¶¶ 51-53.

¹⁷ *Id.* at ¶ 55.

IV. CONCLUSION

For the reasons given above, Sprint respectfully requests that the Commission adopt the proposals and make the clarifications explained in the foregoing.

Respectfully submitted,

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